REMARKS

Claims 1-52, 55, 58 and 61-72 are pending in the application. Claims 1, 19, 35, 40, 45, 47, 52, 55, and 58 are independent claims. Each of the independent claims is being amended. No new matter is being introduced by way of the amendments.

In Part 3 of the present Office Action, claim 55 has been rejected under 35 U.S.C. § 101. In support of this rejection, the present Office Action states the claimed invention is not tangibly embodied because it is not recorded on a computer readable medium.

In accordance with the Examiner's suggestion, claim 55 has now been amended to incorporate language to tangibly embody the claimed invention. Specifically, claim 55 has now been amended to recite "a computer readable medium configured to store a set of computer program instructions; and the set of computer program instructions embodied on the computer readable medium, the set of computer program instructions including instructions to...". No new matter has been introduced. Acceptance is respectfully requested. Accordingly the rejection under 35 U.S.C. § 101 is believed to be overcome.

Claim 1 is being amended to recite, "...to interrogate individual servers represented in the candidate server list by issuing a probe to the individual servers and receiving responses to the probes," where the underlined portion represents the claim amendments in the recitation. Support for the claim amendments can be found (i) in the drawings as originally filed at least in Fig. 4B, in the interaction between Steps 450 and 452 where a probe is sent in step 450 and receives a probe response in step 452 and (ii) in the specification as originally filed at least on p. 14 lines 19-23. Similar amendments have been made in independent claims 19, 35, 40, 45 and 47. Applicant thanks the Examiner for his suggestion with this claim amendment in Part 31 of the present Office Action.

Claims 1, 11-13, 16, 18, 19, 28-30, 33, 35, 38, 40, 43, 45, 47, 50, 52, 55, 58, 62, 64, 66, 68, 70 and 72 stand rejected under 35 U.S.C. 102 (e) as being anticipated by Primak et al. (Pub. No. 2001/0039585) (hereinafter "Primak").

In contrast to Applicant's amended claim 1, Primak discloses a client that only communicates with servers to make a connection request or to conduct substantive communications (e.g., Primak, page 2, paragraph [0024], last sentence). The Primak client(s) do

not "interrogate individual servers represented in the candidate server list by issuing probes to the individual servers and receiving responses to the probes," as now recited in amended claim 1. In other words, in the case of Primak, "communicates" means conducting substantive communications (i.e., data transfer) rather than conducting "interrogation" processes through the issuing and receiving of probes as described in Applicant's specification at least at page 3, lines 12-23.

Applicant is not solely relying on a limitation that the client or other network node, such as a DNS server, is adapted to interrogate individual servers, but also that the "central server ... provides a candidate server list of at least two candidate servers to a network node, adapted to interrogate individual servers represented in the candidate server list by issuing probes to the individual servers and receiving responses to the probes." In other words, Primak discloses clients communicating with servers to make connection requests or to conduct substantive communications, and neither activity provides a "candidate server list of at least two candidate servers" to a client or other network node, such as DNS server.

Based on the foregoing arguments, Applicant respectfully submits that the rejection of now amended claim 1 under 35 U.S.C. § 102(e) as being anticipated by Primak be withdrawn.

Because independent claims 19, 35, 40, 45, and 47 are being amended in a similar manner, these claims should be allowed for similar reasons.

Because claims 11-13, 16, 18, 19, 28-30, 33, 35, 38, 40, 43, 45, 47, 50, 62, 64, 66, 68, 70 and 72 depend from the now amended independent claims, these claims should be allowed for at least the same reasons.

As stated in Parts 12-20 of the present Office Action, claims 2-7, 20-24, 32, 36, 39, 41, 44, 46, 48, 51, 52, 55, and 58 were rejected under 35 U.S.C. 103(a) as being unpatentable over Primak. Because these claims other than claims 52, 55, and 58 depend from the independent claims 1, 19, 35, 40, 45, and 47, as now amended, the arguments above apply. Thus, because the independent claims should be allowable under 35 U.S.C. 103(a), the dependent claims should be allowed for at least the same reasons.

Claims 17 and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Primak in view of Meek et al. (USPN 6,539,426) (hereinafter "Meek"). Meek is being combined with Primak for purposes of load balancing. Because claims 17 and 34 depend from independent

claims 1 and 19, respectively, the arguments above apply. Since Meek does not disclose the shortcomings of Primak with respect to the distinguishing limitations of amended claim 1 as described above in reference to the rejection under 35 U.S.C. § 102(e), Applicant respectfully submits that the rejections of claims 17 and 34 under 35 U.S.C. § 103(a) as being unpatentable over Primak in view of Meek should be withdrawn.

Applicant is amending claims 52, 55, and 58 in this Amendment to recite more clearly one aspect of the invention. Specifically, the recitation of "(iv) clearing the count" is being added to claim 52, and similar limitations are being added to claims 55 and 58. Support for the claim amendments can be found (i) in the drawings as originally filed at least in Fig. 4D at step 490 and (ii) in the specification as originally filed at p. 17 lines 5-7. Applicant believes this Amendment further distinguishes the invention of claims 52, 55, and 58 over Primak as Primak is unable to clear a count. In other words, Primak discloses transmitting capacity information. Capacity information cannot be cleared since clearing capacity information would necessarily cause a disruption in service by the server (i.e., to clear capacity information, capacity would have to be reset). Therefore, Applicant believes that the limitation added to claims 52, 55 and 58 make these claims more clearly non-obvious over Primak because changing Primak's system to allow for clearing capacity information would fundamentally change operation of Primak's system and cause it to fail for its particular purpose.

Claims 8-10, 25-27, 37, 42, and 49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Primak in view of Guenthner et al (USPN 6,134,588) hereafter (Guenthner). Because claims 8-10 depend from claim 1, claims 25-27 depend from claim 19, claim 37 depends from claim 35, claim 42 depends from claim 40, and claim 49 depends from claim 47, which are being amended to include similar limitations as described above in reference to claim 1, the arguments above apply. More particularly, as stated in Part 24 of the Office Action at hand, Guenthner is being applied for its disclosing another server load balancing method where the candidate server list includes extra, randomly selected, candidate servers (e.g., abstract; Figure 8; col. 8, lines 25-50).

However, because Guenthner does not disclose the shortcomings of Primak with respect to the limitations of the Applicant's amended independent claims as described above in reference to the rejections under 35 U.S.C. §102(e), Applicant respectfully submits that the rejection of the

dependent claims 8-10, 25-27, 37, 42, and 49 under 35 U.S.C. § 103(a) as being unpatentable over Primak in view of Guenthner should be withdrawn.

Claims 61, 63, 65, 67, 69, and 71 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Primak in view of Lin et al. (USPN 6,298,451) (hereinafter Lin). Lin is being combined with Primak for purposes of optimizing server selection. Because claims 61, 63, 65, 67, 69, and 71 depend from independent claims 1, 19, 35, 45, and 47 the arguments above apply. Since Lin does not disclose the shortcomings of Primak with respect to the distinguishing limitations of amended claim 1 as described above in reference to the rejection under 35 U.S.C. § 102(e), Applicant respectfully submits that the rejections of claims 61, 63, 65, 67, 69, and 71 under 35 U.S.C. § 103(a) as being unpatentable over Primak in view of Lin should be withdrawn.

CONCLUSION

In view of the above amendments and remarks, it is believed that all now pending claims (claims 1-52, 55, 58, and 61-72) are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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